592 sent to stay with us at various times and were sent to schools which taught English, but nothing would persuade them to take any interest in studies. My cousin Nyein Maung, whom I liked very much, could never bear to keep a shirt on, which was why he was always to be found with only a longyi tucked around his loins playing chinlon or helping boatmen with their canoes, when he should have been sitting fully clothed in a class-room.

[601] My young Uncle Pyant, whom we called U-Ngè, small Uncle, had
• 693 passed his B.A. and his law degree, and returned to Ye in preference to
177 a more modern life in a larger town. He walled off one doorway's space
44 from the main room of the house and filled it with bookcases, a big desk and chairs for visitors. Outside this room my Uncle Pyant put up a sign saying: *"A-htet tan shaynay gyi:* Advocate and Higher Grade Pleader," and within a very short time became the lawyer of the whole village; but so great was his attachment to this consultation-living-room, which had nothing in common with the rest of Ye, that he relinquished all cases whose developing complexities led client and lawyer to a higher court in Moulmein.

592 Grandmother had gardens about ten miles up the creek from Ye.
244 These contained coconuts, durians and areca nuts grown over about
276 fifty acres for commercial disposal. Around the bungalow in the centre
427 of the garden there grew mangosteen, rambutan, pomeloes and pineapples for eating on a large-scale, clumps of bamboos, a coffee tree, tobacco plants, capsicum, lime and citron trees, lemon grass, and vegetables of all kinds to serve the needs of the bungalow and the household in town. My aunts with one young male relative took turns to live at the garden and help the family that was hired to look after it permanently. It was a dangerous life in these plantations as dacoities were very frequent.
[501] The produce was taken down to Ye in a succession of graceful narrow
[447] boats shaped out of single tree trunks. The durians and coconuts were sold straight away to traders who travelled between Moulmein and Ye for this purpose. The areca nuts were first dried on a bamboo attic made by an extension of the platform upper storey of the house until it met the back slope of the roof. When they were dried the whole family gathered around in the back kitchen and removed the husks with blunted nutcrackers, leaving the smooth nut to be sold.

244 With the rice from the paddy-land on the opposite bank, fruits,
262 vegetables and spices from the garden, rolling their cheroots with a mix-
226 ture containing tobacco in leaves shed by the areca trees in the garden,
438 and grinding their own coffee berries, my aunts and grandmother only
276 needed to buy a little fish and meat for their daily consumption. This they could not provide themselves owing to the Buddhist law against

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671 one, as also is the point as to who should be made defendants, and who should be the witnesses. The Talaing Dhammathat says that the incident occurred in the province of Kawdônpayit, in Hindustan, and that the case gave rise to the recognition of the root, trunk, and branches of the law, which till then had not been defined. From whom, or whether the doctor got his fee at all, we are not told.

693 Advocates, pleaders, or barristers were, it is stated, unknown until a case occurred when certain suitors from the jungle came before the king and were not able to understand the court language. A court official was therefore allowed to assist them and turn their rustic jargon into comprehensible speech. These as "standing before" the king were called Shéné, as it were mouthpieces for the parties to the suit, and the king, who acted as judge. The convenience derived from their superior knowledge and experience afterwards led to the establishment of a regular body of barristers.

695 If the laws are, some of them, somewhat singular to those who are accustomed to the scientific Indian penal and civil codes, as well as to the growth of centuries of Western practice, the method of binding over witnesses to tell the truth, or at least the book on which they are required to pledge themselves, is sufficiently startling. The Book of the Oath, Kyeinsa, is still used in British courts of justice, and it is to be hoped that all the younger members of the population know what terrible punishments they are drawing down on themselves when they hold it over their heads and promise to tell the truth; what frightful penalties will befall them if they swerve in the least degree from the exact facts of the case. In the old times a man used always to be sworn on this book in a place where there was no shadow, or in a pagoda, and this custom was maintained to the end in native Burma. There was a special shrine for the purpose in Mandalay, and at the Shwe Mingôn Payā, near the oil-wells of Yenangyaung, there is a stone, ordinarily deposited between two images of the Hentha, the Brahminy goose, which the swearer takes in his hand, lamps being lighted at the same time. The book itself might not be kept in ordinary places. Some copies were kept in the court in a specially consecrated box, some in a zayat, and some, more

692 original and appellate jurisdiction. These officers were execu-
631 tive officers under the crown, but when they sat as judges in their respective courts, they were judges in the full sense of the term, for they were free of all executive control. Finally there
[643] was the Supreme Court. This final court of appeal consisted of the king as the president, the crown prince as the vice-president, the four chief ministers, and their four deputies. The king, however, attended only on rare occasions, and thus the crown prince usually presided over the court. The law that these courts administered and interpreted was the customary
694 law of the Burmese people. One special feature of the courts
[693] was their attempt to settle the case before actually trying it. Lawyers, who were attached to the courts as officers, although their fees were payable by the litigants, also endeavored to conciliate the contending parties. Often the parties decided to refer their suit to an arbitrator. There was no right of appeal from the decision of an arbitrator, on the ground that the arbitrator was chosen by the contending parties themselves. When a suit had been heard and decided, the successful party offered a dish of pickled tea to the other party, and if the latter accepted, the parties were deemed to have been reconciled, and there could be no appeal from the decision of the court. The refusal of the unsuccessful party to accept the offered dish of pickled tea served as his notice of appeal.

671 Burmese history, like the history of many countries, re-
[178] cords rebellions, invasions, and violent struggles for power,
177 but the development of Burmese customary law has been
175 singularly free from catastrophes and sudden changes. There has never been a revolution in the Burmese customary law. However, the law in the course of its long history experienced three great impacts with the outside world. The first was the impact of Hindu jurisprudence, second was the impact of Buddhism, and the third was the impact of English law as the result of the British conquest of the country towards the end of the nineteenth century.

Some of my colleagues of this conference have already

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Although the kingdoms of Prome and Thaton probably based their wealth on trade and commerce, and the kingdom of Pagan based its power and wealth on commerce, the Burmese have been simple agriculturists throughout their history, and therefore Burmese customary law of contract and torts dealt with the business of agriculture, such as water-rights, land-rights, hire of cattle, carts, and implements, and with the relations between employers and laborers. As has been stated before, the Burmese law of contract and tort is no longer valid, and although the Burmese still remain agriculturalists, their business of agriculture is no longer simple as in the days before the British annexation. Nonetheless, some of the rules of law in contract and torts are still of interest. For example, let us consider the law relating to payment of wages to laborers. The Burmese law did not give emphasis to that part of the wages which was to be in the form of money. But it specifically laid down that (1) in the case of an agricultural laborer, he was to receive, in addition to wages in money, a suit of clothes at the end of each "season"—i.e., the "growing season" and the "reaping season," and (2) in the case of a nonagricultural laborer, he was to receive, throughout the period of his employment and in addition to wages in money, "regular meals of rice and curry." For the agricultural laborer, who had his own store of paddy, clothing was of great consequence, and to the nonagricultural laborer food was of great consequence. Thus the Burmese law ensured that the fluctuation either in the general level of wages or in the value of money should not adversely effect either the laborer or his employer. Moreover, as both the laborer and the employer wore the same homespun clothes and ate the same food, the arrangement was fair to both parties. With regard to professional services rendered also, the Burmese law attempted to be fair to both parties, as could be seen from the following rules of law regarding physicians and lawyers:

671 683 675 241 466 671 759 693

If a physician has been called for fee to attend to a sick person, but the sick person recovers or dies before the physician reaches

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671 his bedside, the physician shall be entitled to his fee if he has
759 reached at least the doorway of the sick person's house. In the same
693 way, if a suit is withdrawn or settled, or the judge does not find it necessary to call upon the pleader to argue, the pleader shall be entitled to his fee if he has spoken even a few words, or if he has just pulled up the sleeve of his gown in a gesture of speech. If a client wishes to call in another physician, he shall pay the full fees to the first physician, and shall also offer him a cup of water in token of friendship. If a client wishes to engage another pleader, he shall pay the full fee to the first pleader.

671 The following rules regarding void sales and purchases will
432 further illustrate the essential similarity of Burmese law and the English law of contract:

> There are four cases when a sale or a purchase is void: (i) if the price fixed is below its value; by value it is meant market value at the time of the sale, and even a ruby worth a kingdom before may be sold for one-eighth of a basket of rice, if that is the prevailing market value of rubies; (ii) if the buyer is aware that the ownership of the property is being disputed; (iii) if the whereabouts of the property are not known; and (iv) if the owner of the property is in confinement or under duress.

672 Just as in the English law, under the Burmese law a per-
683 son was responsible for any injury which was the foreseeable consequence of his acts. Thus, it was a rule of law that if a person induced another person to accompany him to a place full of perils, and the latter suffered injury, the former was to pay damages to the full amount of the injury; however, if the second person was aware of the dangerous nature of the place, the damages payable were only half the amount of compensation for the injury. Under the same principle, if a host entertained his guest so well that the latter became intoxicated, the host owed a duty in law to see that the guest reached his home safely; if the guest should be allowed to go home unattended, and if he should die or suffer injury on the way through illness, exposure, snake-bite, attack by robbers or by wild beasts, the host was liable to pay full compensation. The

principle of contributory negligence was also known to Burmese law, and the following rules of law regarding "travelling at night with due caution" will serve as an illustration: 672 683

If there be occasion for a person at night to go about the city or the town, or the village, he shall go only with a lantern, for if he goes about without a lantern and is stopped, or hindered, or attacked, he shall not be entitled to damages. If, however, he is going about in search of a doctor, and if he shouts out this fact in the darkness, he shall be entitled to full compensation from the offender who stops or strikes him, even though he carries no lantern. In the same way, if a young woman goes about at night beyond the usual hours when people go about, and if she wears no kerchief on her breast, and if her modesty is outraged, she shall not be entitled to any damages.

The unity of Burmese society has always been the family, but unlike the rigidly knit Roman family or the Hindu joint family, it easily disintegrates. A Burmese family is loosely knit by ties of blood, and sometimes of marriage, and thus it usually consists of the father, the mother, and their unmarried sons and daughters. The sons however can leave the family even before marriage on attaining the age of puberty (sixteen years of age), and the daughters on attaining the age of majority, but sons and daughters of course usually leave the family only on marriage. Sometimes sons and daughters decide to remain in the family even after marriage, at least for some time. The head of the family is the father, and on his death, the mother succeeds to the headship of the family, as in Burmese law the husband and wife are heirs to each other. The head of the Burmese family exercises general control over the family, but unlike the heads of the Roman and Hindu families, he performs no religious ~~duties~~. He or she has the right to betroth his or her daughter under the age of majority to a male of his or her choice, but the right is subject to the daughter's right of repudiating the betrothal, either by refusing to marry the man chosen by her parent, or by compelling the parent to recognize her betrothal to the man of her own choice. 671 693 [584]